IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE WRIT PETITIONS

Writ Petition No.2682 of 2002
with
Writ Petition No.2784 of 2004
with
Writ Petition No.2820 of 2002
with
Writ Petition No.2927 of 2003
with
Writ Petition No.95 of 2004
with
Writ Petition No.1817 of 2005
with
Writ Petition No.801 of 2002

W I T H

APPELLATE SIDE WRIT PETITIONS

Writ Petition No.3694 of 2002
with
Writ Petition No.480 of 2005
with
Writ Petition No.7120 of 2003
with
Public Interest Litigation No.96 of 2001

O.S. WRIT PETITIONS

WRIT PETITION NO.2682 OF 2002
with
WRIT PETITION NO.801 OF 2002
with
WRIT PETITION NO.2820 OF 2002
with
WRIT PETITION NO.2784 OF 2004
with
WRIT PETITION NO.2927 OF 2003
with
WRIT PETITION NO.95 OF 2004
with
WRIT PETITION NO.1817 OF 2005
with
Appellate Side Writ Petition No.3694 of 2002

Rashtriya Mill Mazdoor Sangh. .. Petitioners
v/s.
State of Maharashtra & ors. .. Respondents

In O.S. W.P. Nos.2682/2002, 801/2002 & 2820/2002 :

Ms.Nayana Buch with Mr.H.D.Buch i/by Ms.Bina Dholakia for petitioners.

Mr.S.K.Nair, for respondent Nos.1 & 2.

Ms.Nandini Menon for res.No.3.

In O.S. Writ Petition No.2784 of 2004 :

Ms.Nayana Buch with Mr.H.D.Buch i/by M/s.Bina Dholakia for petitioners.

Mr.S.K.Nair for res.Nos.1 & 2.

Mr.Mayur Jariwala for res.No.3.

In O.S. W.P. No.2927 of 2003 :

Ms.Nayana Buch with Mr.H.D.Buch i/by Ms.Bina Dholakia for petitioners.

Mr.S.K.Nair for res.Nos.1 & 2.

In O.S. W.P.No.95 of 2004 :

Ms.Nayana Buch with Mr.H.D.Buch i/by Ms.Bina Dholakia for petitioners.

Mr.S.K.Nair for res.Nos.1 & 2.

Ms.Nandini Menon for res.No.3.

In O.S. W.P. No.1817 of 2005 :

Ms.Nayana Buch with Mr.H.D.Buch i/by Ms.Bina Dholakia for petitioners.

Mr.S.K.Nair for res.Nos.1 & 2.

Ms.Swapnila D. Rane for res.No.3.

In Appellate Side W.P. No.3694 of 2002 :

Ms.N.D.Buch with Mr.H.D.Buch i/by Ms.Bina Dholakia for petitioners.

Mr.Vinay Sonpal, AGP for res.Nos.1 & 2.

APPELLATE SIDE MATTERS :

Writ Petition No.480 of 2005

Sudhir Anant Barve & anr. .. .. Petitioners
v/s.
State of Maharashtra & ors. .. Respondents

Mrs.Vaidehi Kamat for petitioners.

Mr.Vinay Sonpal, AGP for res.Nos.1 & 2.

W I T H

Writ Petition No.7120 of 2003

Shahu Soot Kapad Kamgar Sangh. .. Petitioner
v/s.
State of Mah. & three ors. .. Respondents

Mr.M.S.Topkar for petitioner.

Mr.Vinay Sonpal, AGP for respondents.

W I T H

Public Interest Litigation No.96 of 2001

M/s.HOC Officers' Association. .. Petitioner
v/s.
Union of India & ors. .. Respondents

Mr.V. Mishra for petitioner.

Mr.Rajiv Chavan with Mr.R.C.Master i/by
Mr.T.C.Kaushik for res.No.1.

CORAM : H.L. GOKHALE &
J.P. DEVADHAR, JJ.

DATED : 25th November 2005

P.C. :

1. All these Writ Petitions seek a declaration that the recovery of the amount of

professional tax from the amounts due to the employees seeking voluntary retirement beyond the year in which they seek voluntary retirement is bad in law. The same issue was pending before a Division Bench of this Court at Nagpur in Writ Petition No.46 of 2005 in the case of **Mrs.Ranjana w/o. Anil Ringay & ors. vs. Government of Maharashtra & ors.** The said Petition has come to be allowed by the Division Bench by its judgment and order rendered on 22nd July 2005. In para-9 of its judgment, the Division Bench has clearly come to the conclusion that no professional tax would be liable to be paid if there is no employer-employee relationship. Therefore, the Division Bench has held that subsequent to the voluntary retirement, no professional tax could be demanded. It could only be demanded in the year in which the employee seeks a voluntary retirement. It flows from this judgment that even in the year of retirement the professional tax would not be liable after the date of retirement. This flows from Schedule I read with Section 3 of the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975. The Schedule provides that where the salary exceeds Rs.10,000/-, on a higher side, the professional tax would be Rs.2,500/- per annum and would be

payable divided in each month as directed in the Schedule.

2. The Commissioner of Professional Tax, Maharashtra State, has issued a circular on 15th October 2005 and the Joint Sales Tax Commissioner (Professional Tax) has addressed a letter dated 23rd November 2005 to Mr.Sonpal, Assistant Government Pleader appearing in these matters recording therein that the said decision in Writ Petition No.46 of 2005 has been accepted by the Sales Tax Commissioner. This being the position, all these Writ Petitions will have to be allowed with appropriate directions.

3. **ORIGINAL SIDE WRIT PETITION NOS.801 OF 2002 WITH APPELLATE SIDE WRIT PETITION NO.3694 OF 2002 :**

. Both these Petitions were admitted and an interim order was sought whereby the amounts of the professional tax to be deducted from the salaries of the concerned employees were directed to be retained with respondent No.3-Maharashtra State Textile Corporation. This being the position, as far as these two Petitions are concerned, the consequential order will be that

the said Corporation will be directed to refund the deducted amounts to the employees concerned with interest at the rate of 6% per annum. This will be after setting apart an amount of Rs.2,500/- in the event no professional tax has been deducted from month to month during the earlier period of that year. In the event such a professional tax has been deducted, certainly the amount of Rs.2,500/- will not be kept apart. In the event the professional tax is not so deducted, the amount of Rs.2,500/- will be kept apart and will be paid over to the concerned Professional Tax Section with 6% interest.

4. **ORIGINAL SIDE WRIT PETITION NOS.2682 OF 2002, 2927 OF 2003, 95 OF 2004, 1817 OF 2005, 2784 OF 2004 AND 2820 OF 2002 :**

. In all these matters, the Court has passed an order directing the concerned employer to deposit the deducted amounts in the High Court and the Prothonotary and Senior Master has been directed to invest those amounts appropriately. (However, this order appears not to have been made in the last Petition i.e. Writ Petition No.2820 of 2002.) This being the position, in all these matters, the Prothonotary and Senior Master is

directed to release the amounts deposited with interest to the employees concerned after deducting an amount of Rs.2,500/- and the interest thereon. The amount of Rs.2,500/- with interest will be paid over to the Commissioner of Sales Tax (Professional Tax). The amounts due to the employees will be paid to them on their producing appropriate documents of identification. The employees concerned will be identified by representatives of the recognised Union and the Labour Officer or appropriate Officer of the employees.

5. The Petitioner-Trade Union in all these matters will approach the concerned employer for tendering a list of the employees with the amounts which have been deposited for each of them in the High Court. The concerned officer of the management is directed to co-operate and to file a list within two weeks from the Union making an application for that purpose.

6. **PUBLIC INTEREST LITIGATION NO.96 OF 2001:**

. In this matter in view of the interim order in terms of prayer clause (b), the amounts to be deposited towards the professional tax have

remained with respondent No.5-Hindustan Organic Chemicals Ltd. Respondent No.5 is, therefore, directed to release those amounts after finding out as to how much amount from the tax would be due from each of its employees in the year in which they retired. After finding out the amount which is due towards the professional tax, the said amount will be paid over to the Commissioner of Sales Tax (Professional Tax) with interest at 6% and the remaining amount will be paid over to the employees with interest at 6%. That will, however, be on the employees concerned producing their appropriate documents of identification to the satisfaction of the management.

7. **APPELLATE SIDE WRIT PETITION NOS.7120 OF 2003 WITH 480 OF 2004 :**

. Both these Petitions have been admitted, though no order with respect to either deposit or investment has been made. Mr.Topkar and Mrs.Kamat appearing for the Petitioners in these two matters are not sure as to whether the amounts have been deducted and paid over to the concerned department or whether they have been retained with the employer. In the event the amounts are retained with the employer, the employer is directed to

release those amounts to the employees concerned after deducting the appropriate amount of professional tax in the last year of employment. The amounts meant for the Professional Tax Department will be paid over to it with 6% interest and the amounts meant for the employees will be paid over to them also with 6% interest. The employees will produce appropriate documents of identification for that purpose.

8. In the event the entire deducted amount has been paid over to the concerned Professional Tax Department, the Trade Union concerned will approach the concerned Department along with appropriate letter of the management and list of employees and the Authorities of the Professional Tax will refund the excess amount to the employees concerned with interest at the rate of 6% on proper identification.

9. All these Petitions stand disposed of with this order.

(H.L. GOKHALE, J.)

(J.P. DEVADHAR, J.)